

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SWINOMISH INDIAN TRIBAL  
COMMUNITY, a federally recognized Indian  
Tribe,

Plaintiff,

v.

BNSF RAILWAY COMPANY, a Delaware  
corporation,

Defendant.

NO. 2:15-cv-00543-RSL

STIPULATED MOTION AND ORDER  
TO FILE AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(2) and Local Civil Rule 15, the Parties file this Stipulated Motion and Order to permit Plaintiff Swinomish Indian Tribal Community leave to file a First Amended Complaint, and states as follows:

1. On April 7, 2015, Plaintiff filed its Complaint for Declaratory Judgment, Injunctive Relief, Trespass and Breach of Contract. (Dkt. 1).

2. At oral argument on Defendant's Motion to Dismiss, "the parties agreed to bifurcate issues related to damages in favor of resolving the preemption and liability issues first." (Dkt. 19).

3. Although the damages issues are bifurcated, Plaintiff desires to amend its complaint to clarify the nature of the damages it seeks and out of an abundance of caution, assert a standalone federal common law claim for restitution/unjust enrichment. Because the damages issues are bifurcated, the addition of this claim will have little to no impact on the

pending liability issues because it seeks disgorgement from BNSF, the amount and calculation of which will occur in the second phase of litigation. All facts relevant to this claim are encompassed within the Tribe's trespass, breach of contract, and injunctive relief claims.

4. Defendant BNSF Railway Company stipulates to Plaintiff's filing of its First Amended Complaint, without waiving any rights.

5. Accordingly, Plaintiff requests that the Court grant this stipulated motion and permit the Tribe leave to file its First Amended Complaint, which is attached as Exhibit A hereto. Additionally, per Local Civil Rule 15, attached as Exhibit B hereto is a markup of the proposed pleading showing how it differs from the prior pleading.

DATED this 14th day of August, 2020.

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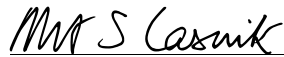
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***Attorneys for Plaintiff***

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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3 Dated this 14th day of August, 2020.  
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6 Robert S. Lasnik  
7 United States District Judge  
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